

Serial No. 09/671,674

Response to Official Action of November 25, 2003

REMARKS

In response to the Notice of Non-Compliant Amendment, the patentee submits as follows.

The Notice asserts that the amendment filed November 12, 2003 is considered non-compliant because the amendment: 1) failed to meet the requirements of 37 CFR 1.121, and that the amendment failed to provide a complete listing of all of the claims, as required, and further 2) failed to present the claims of the amendment in ascending numerical order.

The patentee hereof respectfully traverses each of the assertions, and corresponding requirements, as follows.

1. The Legal Instruments Examiner is courteously referred to 37 CFR 1.121, on which the Notice relies. As clearly set forth at section (a) therein, the provisions of 37 CFR 1.121 are applicable to "Amendments in applications, other than reissue applications...".

Therefore, inasmuch as the present application is a reissue application, the amendment filed November 12, 2003 was not required to, and indeed did not, adhere to the provisions of 37 CFR 1.121.

2. The claims of the amendment, specifically only a single claim 33, cannot be asserted not to "have not been presented in ascending numerical order" since only a single claim (33) was presented, and since no claim having a lower numerical identification is presented thereafter nor is any claim having a higher numerical identification presented therebefore.

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Accordingly, it is quire clear that the "claims of this amendment paper", in fact, were presented in ascending numerical order.

Reconsideration of the assertion of Non-Compliant Amendment is thus clearly in order and the same is respectfully requested.

In that regard, it is noted that amendments in reissue applications are governed by the provisions of 37 CFR 1.173. Towards that end, it is noted that, indeed, the provisions of 37 CFR 1.173 (b)(2) requires each amended claim to include a parenthetical expression "amended", etc., to follow the claim number. Although the pending Notice does not identify any inconsistency with the provisions of 37 CFR 1.173, it is noted that the parenthetical expression "amended" is lacking from the only claim amended by the amendment filed November 12, 2003.

Accordingly, the "Amendments to the claims" section of the prior amendment is re-submitted herewith, including a correction to comply with the provisions of 37 CFR 1.173, which governs the same.

Inasmuch as the amendment is not required to comply with the portions of CFR identified in the Notice, and since the amendment in fact fully complies with the requirements of governing section 37 CFR 1.173, reconsideration and withdrawal of the Notice is clearly in order and the same is courteously solicited.

To the extent possible, applicants have fully responded to the pending Official Action. It is respectfully submitted that, in view of the present remarks, it will be appreciated that the Declaration filed in February, 2003 is proper, that no

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recapture is sought, and that rejection under 35 USC 102 is improper.

Accordingly, it is respectfully submitted that the application is in condition for allowance and an early indication of the same is courteously solicited. In order to expedite resolution of any remaining issues and further to expedite passage of the application to issue, the Examiner is respectfully requested to contact the undersigned by telephone at the below listed local telephone number if any further comments, questions or suggestions arise in connection with the application.

Respectfully submitted,
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